

(1) Whether an accidental injury arises out of and in the course of employment is a jurisdictional issue and may be reviewed under K.S.A. 1996 Supp. 44-534a.

(2) Claimant worked for the State of Kansas as a home-care worker. On August 22, 1996, claimant injured her back while assisting an SRS client from the toilet to a wheelchair. Respondent contends the accident occurred while claimant was "performing services outside the scope of her employment" because claimant was allegedly assigned to perform light housekeeping chores only. Conversely, claimant testified her previous supervisor directed her to assist the client in and out of the wheelchair to use the toilet. Respondent presented two witnesses, a social worker and claimant's present supervisor, who testified that assisting the client into her wheelchair was outside claimant's assigned duties.

The Administrative Law Judge found claimant's accident compensable and the Appeals Board agrees. The Appeals Board finds claimant's testimony persuasive and concludes the act of assisting the client into the wheelchair on the date of accident was incidental to claimant's assigned duties. Therefore, claimant's August 22, 1996, work-related accident arose out of and in the course of her employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated January 7, 1997, entered by Administrative Law Judge Steven J. Howard should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Carlton W. Kennard, Pittsburg, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director